

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

Eric Ferguson,

Debtor.

Case No. 20bk17679

Chapter 7

David R. Herzog, not individually but as Trustee
for the Estate of Eric Ferguson,

Plaintiff,

v.

Eric Ferguson,

Defendant.

Adv. Case No. 20ap00426

Judge Timothy A. Barnes

AMENDED TRIAL SCHEDULING ORDER

On December 30, 2020, David R. Herzog, not individually but as Trustee for the Estate of Eric Ferguson, (the “Plaintiff”) filed Complaint Objecting to Discharge [Adv. Dkt. No. 1] (the “Complaint”). Eric Ferguson (the “Defendant”) timely filed Debtor/Defendant’s Answer to Complaint Objecting to Discharge [Adv. Dkt. No. 6] to the Complaint.

It is necessary under Fed. R. Civ. P. 40, made applicable to this matter by Fed. R. Bankr. P. 7040, for the court to schedule a trial (the “Trial”).

The following provisions will govern the future course of this proceeding. The filing requirements and deadlines of this Order may not be altered except by further order of the Court upon a motion by one of the parties, which motion must be properly noticed, filed and served.

Failure to comply with the provisions of this order may result in waiver of claims or defenses, dismissal, default, exclusion or admission of evidence, or other sanctions, as justice may require. If the court does not receive the items set forth in this Order by the deadlines set forth herein, the court may strike the Trial and/or order other relief.

1. **Trial:** The Trial is set for 1 afternoon commencing at **1:30 PM** on **Tuesday, July 20, 2021.**

2. **Zoom:** Due to the continuing public health emergency posed by COVID-19, the court finds good cause and compelling circumstances to conduct the Trial by video. *See* Fed. R. Bankr. P. 9017 (incorporating Fed. R. Civ. P. 43(a)); *Thomas v. Anderson*, 912 F.3d 971, 977 (7th Cir. 2018) (court has discretion to allow live testimony by video); *see also* Fed. R. Evid. 611(a) (court may exercise control over mode of examining witnesses and presenting evidence)).

The Trial will therefore be conducted via the Zoom videoconferencing application. The court will provide counsel with a meeting number and password to access the Trial via Zoom. The Trial will be conducted with the video function on.

3. **Civil Rule 43 Consent:** All parties have consented on the record to conducting the Trial by video. Therefore, any objections related to appropriate safeguards pursuant to Fed. R. Civ. P. 43(a) are waived.

4. **Joint Pretrial Statement:** Counsel for all parties must confer and together prepare and file with the court on or before **Tuesday, July 13, 2021**, a *joint document* captioned “Joint Pretrial Statement.” The Joint Pretrial Statement must contain the following information:

- a. A brief statement of the theory of each claim and each defense;
- b. A statement of stipulated facts in numbered paragraphs;
- c. A statement in numbered paragraphs setting out the material facts which are in dispute;
- d. A list of the witnesses each party intends to call at the Trial. In their witness lists, the parties shall provide the following information: (i) the full name and title of the witness; (ii) the general matter on which the witness will testify; (iii) the location of the witness (*i.e.* city, state, country); (iv) the type of place and street address from which the witness will testify (*e.g.*, home, office); and (v) the identity of any persons who will be in the room with the witness and the purpose for that person’s presence;
- e. Any objection to the opposing party’s witnesses, stating grounds; and
- f. Each party’s list of exhibits it plans to offer with objections noted, stating grounds.

5. **[INTENTIONALLY LEFT BLANK]**

6. **Parties Appearing at the Trial:** All persons appearing in the Trial should wear appropriate courtroom attire. Counsel are each responsible for providing the meeting number and password to any witnesses to be called by such counsel and other persons appearing at the Trial. The link must not be shared with any other persons.

7. **Witnesses:** At the Trial, witnesses must appear by video at any time when they are testifying. All witnesses will be sworn in over the video conference. Remote testimony will have the same effect and be binding upon the witness in the same manner as if occurring in open court. Witnesses are prohibited from accessing any electronic devices during their testimony except to the extent necessary to view a rebuttal exhibit or for other reasons authorized in advance by the court. In the event counsel needs to communicate off the record with a witness, counsel must request a recess during the Trial. While a witness is testifying, no person may be present in the room from which he or she is testifying unless **authorized in advance by the court**.

8. **Participant Roster:** On or before **Tuesday, July 13, 2021**, each party shall email all other parties and the court (barnes_chambers@ilnb.uscourts.gov) a roster of all such party's participants in the Trial, including the names, email addresses, mailing addresses and telephone numbers for all attorneys, witnesses and any other persons participating. The telephone number should be a number at which the person can be reached during the Trial in the event of technical difficulties.

9. **Test:** The court will conduct a test of the video transmission before the Trial. The Courtroom Deputy will contact the parties on the participant roster to arrange a date and time for the test. For the test, participants must use the equipment and internet connection that they plan to use during the Trial. All persons planning to participate by video at the Trial (including witnesses) should participate in the test. Parties must familiarize themselves with the general hearing procedures for Zoom hearings available at: <https://www.ilnb.uscourts.gov/content/judge-timothy-barnes>. To the extent such general procedures are in conflict with the specific directions in this Order, this Order governs.

10. **Exhibits:** On or before **Tuesday, July 13, 2021**, each party shall: (i) file and serve in PDF format; and (ii) email all other parties and the court (barnes_chambers@ilnb.uscourts.gov) a copy of the exhibits to be used in connection with the Trial. The Plaintiff shall identify exhibits with tabs with numbers, while the Defendant shall identify exhibits with letters. The parties shall also be responsible for providing a hard copy of the exhibits for use by each remote witness at the Trial by no later than two (2) business days prior to the Trial. Such hard copies shall be sealed with instructions to the witness to not open the copies until instructed to by the court.

11. **Evidentiary Objections:** Any objection to evidence shall be pled in the Joint Pretrial Statement, unless the court orders otherwise. Separate motions *in limine* shall not be filed. All objections to evidence will be addressed by the court at the outset of the Trial, keeping in mind the following practice of the court:

- a. Any exhibit to which an objection is not raised in the Joint Pretrial Statement will be received in evidence without the need to establish foundation.
- b. Any objection to an exhibit (other than weight/relevance) which is **not** raised in the Joint Pretrial Statement will be waived.
- c. Whether evidence is considered by the court and what weight the court gives the evidence depends upon the party relying on such evidence to demonstrate at the Trial the relevance and reliability of that evidence in relation to the party's case. If an exhibit is not mentioned by the parties at the Trial, it will not be considered to be relevant by the court.


12. **Rebuttal/Impeachment items:** By no later than **Tuesday, July 13, 2021**, the parties must electronically exchange any potential rebuttal and impeachment items, subject to the protections below. The parties must also email or otherwise electronically deliver a copy of such exhibits to the court at barnes_chambers@ilnb.uscourts.gov. Each rebuttal and impeachment

exhibit must be provided in PDF format with password protection.¹ The parties are responsible for ensuring that the PDF documents have been downloaded by witnesses in advance of the Trial to minimize delays. At the Trial (and not before), when a party seeks to introduce a rebuttal or impeachment exhibit, the party must, on the record, provide the password to the witness.

13. **Court Reporters and Transcripts:** The court uses electronic recording of matters. If the parties need a transcript of matters before the court, such transcripts are available through D&E Reporting (D.and.E.Reporting@gmail.com). If the parties require a live court reporter attend the Trial via video, they are required to arrange for and bear the cost for the same. Any such arrangements must be communicated to Judge Barnes's courtroom deputy no less than 2 business days prior to the Trial.

ENTERED:

Dated: June 29, 2021



Judge Timothy A. Barnes

¹ To password protect a PDF file, open Tools in Adobe, click Protect, click Encrypt, and then click Encrypt with Password. It is advisable to use a different password for each rebuttal exhibit.